

## **SUPPLEMENTAL REMARKS**

The Office Action dated May 13, 2008 has been received and carefully noted, and a Response dated August 8, 2008 was previously supplemented to address the concerns raised in the Office Action. The following supplemental remarks are submitted to further clarify the Response of August 8, 2008.

Claims 73-104 are currently pending in the present application, including independent claims 73, 83, 93, 97, and 101. It is believed that all grounds for rejection in the Office Action are currently addressed and that the present application is in condition for allowance in view of the prior Response of August 8, 2008, the content of which is hereby incorporated by reference in full, and the following comments. Reconsideration of 73-104 is respectfully requested.

### **Claim Rejections Under 35 U.S.C §103(a)**

Claims 20-25, 28-34, 37, 39-44, 47, and 72 are rejected as being allegedly unpatentable over U.S. Patent Publication No. 2002/0110101 (Gopalakrishnan) in view of an article entitled “Code Placement and Replacement Strategies for Wideband CDMA OVSF Code Tree Management” (Tseng) and U.S. Patent Publication No. 2003/0231586 (Chheda). Referring, for example, to claim 20, the Office Action took the position that Gopalakrishnan disclosed all limitation of this claim except that the measuring a weighted code blocking rate and that an adjusted characteristic is power, but that these deficiencies are cured, respectively, by Tseng and Chheda. As described in Applicants’

prior Response of August 8, 2008, the combination of Gopalakrishnan, Tseng, and Chheda fails to disclose each and every limitation recited in an of the pending claims.

Claims 48-53, 56, 60-65 and 68 are rejected as being allegedly unpatentable over Gopalakrishnan, Tseng, and Chheda, further in view of U.S. Patent No. 5,138,311 (Weinberg). For example, regarding claim 48, the Office Action alleged that the combination of Gopalakrishnan, Tseng, and Chheda disclose all limitations of this claim with the exception of the “relative activity factor,” but that this deficiency is cured by Weinberg. However, as described in greater detail below, the combination of Gopalakrishnan, Tseng, Chheda, and Weinberg fails to disclose each and every limitation recited in an of the pending claims.

As described in the prior Response of August 8, 2008, the combination of Gopalakrishnan, Tseng, and Chheda do not disclose every recitation of claims 73-104, and Weinberg does not cure these deficiencies.

Applicants further note that Weinberg is directed to a different technological field. Specifically, Weinberg relates to a communication system commonly accepting a page request from several different sources, e.g. a telephone 102, a page entry terminal device 104, and a computer with modem 106. The page request is normally accepted through a public or private telephone network 108 which couples the page request from one of the sources (i.e. callers) to an automatic telephone input at a paging terminal (column 1, lines 17 to 25 of Weinberg).

A dedicated input at the paging terminal 112 may accept a page request from a local video display terminal or console. A page request from a telephone caller may be

accepted and entered into the paging terminal (see, for example, column 1, line 25 to 33 of Weinberg).

Thus, Applicants note that Weinberg is completely unrelated to any physical downlink shared channel. Neither a physical downlink channel nor any physical downlink shared channel is provided or discussed in Weinberg. Thus the combination of Gopalakrishnan, Tseng, and Chheda with Weinberg is improper under 35 U.S.C. §103(a). Under MPEP §2141(01)(a), the combination of non-analogous art is *per se* improper because a persons of ordinary skill in the communications would not look to combine these references.

The requirement for the combined references to be in analogous art is a separate and distinct requirement under §103(a) from a showing that a teaching, motivation, suggestion, or technical trend exists to combine the cited references, such that both conditions are necessary for a *prima facie* rejection.. Since Weinberg relates to a different field of communications, and there is no teaching, motivation, suggestion, or technical trend exists to combine the cited references, it must be assumed that the combination was formed through improper hindsight. Applicants note, for example, that the Office Action appears to reject the pending claims on a piecemeal basis, such that separate recited limitations are each separately rejected in view of separate limitations.

Accordingly, Applicants urge that this rejection of claims 48-53, 56, 60-65 and 68 is legally improper and should be withdrawn on at least these legal grounds.

Applicants further note that the communication activity monitored in Weinberg refers to on/off times of a transmitter base station (column 8, lines 13 to 22 of Weinberg).

Such on/off times of the transmitter base station 226 is completely unrelated to the claimed measuring of the relative activity factor of the physical downlink shared channel. Such a relative activity factor of the physical downlink shared channel may be completely different from a relative activity factor of a downlink shared channel or other physical channel and is furthermore independent on such turning on or off of a base station. Even when measuring a relation of on and off times of a base station, no measurement result is received regarding any relative activity of any physical downlink shared channel is not discussed in Weinberg in any way. Even when a base station should be switched on, a physical downlink shared channel may still be silent and therefore have a completely different relative activity factor as compared to the channel activity measured in Weinberg. Again, Weinberg does not even mention any physical downlink shared channel.

Thus, for these additional reasons, Weinberg does not make up for the above-described limitations in Gopalakrishnan, Tseng, and Chheda since Weinberg generally does not teach or suggest measuring average transmitted power and a relative activity factor of the downlink channel. For at least these reasons, claims 73-104 are allowable over the combination of Gopalakrishnan, Tseng, Chheda, and Weinberg. Specifically, Applicants urge that this rejection of claims 48-53, 56, 60-65 and 68 is improper and should be withdrawn on at least these legal grounds because the cited combination of references fails to disclose each and every limitation in these claims.

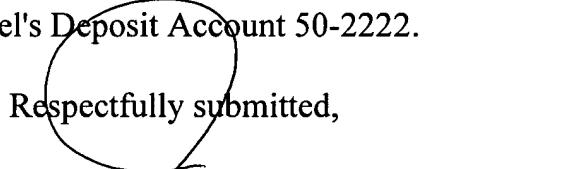
As discussed above and in the prior submitted Response of August 8, 2008, each of the pending claims 73-104 recites subject matter which is neither disclosed nor

suggested in any of the cited references. Applicants submit that the recited subject matter is more than sufficient to render the invention non-obvious to a person of ordinary skill in the art. It is respectfully requested that claims 73-104 therefore be allowed in view of the above amendments and remarks, and that the present application be passed to issue.

If for any reason the Examiner determines that the application is not now in condition for allowance, it is respectfully requested that the Examiner contact, by telephone, the applicants' undersigned representative at the indicated telephone number to arrange for an interview to expedite the disposition of this application.

In the event this paper is not being timely filed, the applicants respectfully petition for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,

  
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